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SUBJECT: PERU NATIONAL TRADE ESTIMATE REPORT 2010

REF: SECSTATE 105824

11. (U) In response to State 105824, Embassy Lima reports the following update for its National Trade Estimate Report. This report has also been sent as a Word document with track changes to USTR by email on December 4.

12. (U) TRADE PROMOTION AGREEMENT

The United States and Peru signed the United States-Peru Trade Promotion Agreement (PTPA) on April 12, 2006. Peru's Congress ratified the Agreement in June 2006 and a protocol of amendment in June 2007. On December 14, 2007, President Bush signed into law the PTPA Implementation Act which approved the PTPA. The PTPA entered into force on February 1, 2009.

The PTPA is a comprehensive free trade agreement. The PTPA will result in significant liberalization of trade in goods and services between the United States and Peru. Under the PTPA, Peru immediately eliminated most of its tariffs on U.S. exports, with all remaining tariffs phased out over defined time periods. The PTPA also includes important disciplines relating to: customs administration and trade facilitation, technical barriers to trade, government procurement, services, investment, telecommunications, electronic commerce, intellectual property rights, and labor and environmental protection.

13. (U) IMPORT POLICIES

Tariffs

Under the terms of the PTPA, 80 percent of U.S. exports of consumer and industrial products to Peru became duty free immediately, with remaining tariffs phased out over 10 years. More than two-thirds

of current U.S. farm exports gained immediate duty-free access to Peru. Tariffs on most of the remainder of U.S. farm products will be phased out within 15 years, with all tariffs eliminated in 17 years. Peru has also agreed to eliminate its price band system on trade with the United States.

Nontariff Measures

The government of Peru has eliminated many nontariff barriers, and under the PTPA subjects remaining measures, including subsidies and import licensing requirements, to additional disciplines. Peru currently restricts imports of certain used goods, including used clothing and shoes (except as charitable donations, which are subject to the 19 percent value added tax), used tires, cars over five years old, and heavy trucks (weighing three tons or more) over 8 years old. Used cars and trucks that are granted import permits must pay a 45 percent excise tax (compared to 20 percent for a new car) unless they are refurbished in an industrial center in the south of the country after importation, in which case they are exempted entirely from the excise tax. Under the PTPA, Peru affirmed that it would not adopt or maintain prohibitions or restrictions on trade in remanufactured goods, and that certain existing prohibitions on trade in used goods would not apply to remanufactured goods. This commitment opens new and significant export opportunities for firms involved in remanufactured products

such as engines, automotive parts, mining and construction equipment, transportation machinery, medical equipment, and computers.

14. (U) STANDARDS, TESTING, LABELING, AND CERTIFICATION

In 2008, Peru issued a new technical regulation on footwear labeling to address concerns of dumping from Asian countries. The new regulation requires that footwear have a label that includes the fiscal identification number (Registro ????nico de Contribuyente -R.U.C.) of the manufacturer or importer of the finished product, as well as for the manufacturer of the materials that comprise the four major components of the footwear. In 2008, the three main footwear items imported by Peru amounted to \$110.6 million. Of these \$98,592 (less than 0.1% of the total) originated in the United States. Industry has voiced legitimate concerns that this regulation is onerous and unnecessary. In order to comply with the regulation, a major footwear importer requires its suppliers to comply, while another importer has addressed the issue by attaching additional labels at the local bonded warehouse before clearing Customs (at the importer's expense).

Sanitary and Phytosanitary Measures

Peru has addressed a number of significant sanitary and phytosanitary (SPS) and technical regulation issues that had impeded or stopped U.S. exports of beef, pork, poultry, and rice. However, Peru's national animal and plant health agency, SENASA (Servicio Nacional de Sanidad Agaria) continues to ban U.S. live cattle imports based on Bovine Spongiform Encephalopathy (BSE) restrictions that are inconsistent with the May 2007 World Organization for Animal Health (OIE) classification of the United States as a "controlled risk" country for BSE. OIE standards specify that trade in live cattle of a "controlled risk" country should be permitted. U.S. officials continue to engage Peru's authorities in pursuit of science-based import requirements with respect to such trade. Peru, along with Bolivia, Ecuador and an Andean Community representative, participated in an August 2008 trip organized by the U.S. Department of Agriculture to evaluate

the U.S. live cattle system in hopes of improving access for U.S. live cattle to these nations. In May 2009, the CAN published a proposed regulation with the requirement that only live animals under 24 months of age would be allowed to be imported. Such a restriction has no technical justification and is inconsistent with the OIE. APHIS submitted technical comments on the draft in July and comments are currently under review by the CAN and the four member countries.

15. (U) GOVERNMENT PROCUREMENT

Since 2002, Peru has applied a 20 percent price preference to bids by Peruvian firms in government procurement. The price preference may no longer be applied against U.S. companies in procurement covered by the PTPA. The PTPA requires the use of fair, nondiscriminatory, and transparent procurement procedures for procurement covered by the PTPA. Also, under the PTPA, U.S. suppliers are permitted to bid on the procurement of most Peruvian central government entities, including state-owned enterprises such as Peru's oil company and Peru's public health insurance agency. The anticorruption provisions in the PTPA require Peru to ensure under its domestic law that bribery in matters affecting trade and investment, including in government procurement, is treated as a criminal offense or is subject to comparable penalties.

Peru is not a signatory to the WTO Agreement on Government Procurement.

16. (U) INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Peru has put in place laws and regulations to implement its obligations under the PTPA, bringing about a number of important improvements in IPR protection and enforcement. Some of these improvements include: protecting trademarks used in Internet domain names, strengthening measures to prevent the circumvention of technological devices for preventing Internet-based copyright piracy, removing burdens for patent registration, protecting against unfair commercial use of test data and other undisclosed information submitted in connection with regulatory approval for pharmaceutical and agricultural chemical products, and providing deterrent-level penalties for piracy and counterfeiting.

Trademarks, Patents, and Data Protection

Peru amended its law on industrial property as well as related laws and regulations to put in place state-of-the-art protections for trademarks and patents. Peru has developed an online system for registering and maintaining trademarks. Peru also ensures that the first person to acquire a right to a trademark or a geographical indication (GI) is the only person who has the right to use it.

In the area of patents, Peru removed unnecessarily burdensome requirements in its patent application process and put in place procedures and remedies to prevent the marketing of unauthorized copies of pharmaceutical products. Consistent with its PTPA obligation, Peru established a data protection regime that protects test and other data submitted in connection with marketing approval for medicines and agrochemical products. The regime seeks to balance the promotion of pharmaceutical innovation with access to medicines.

Copyrights

As part of its PTPA obligations, Peru amended its Copyright Law to reflect the realities of copyright in the digital age. For instance, Peru has established strong anti-circumvention provisions to prohibit tampering with technologies designed to prevent piracy and unauthorized distribution of songs, movies, or other works over the Internet. Other improvements include extending the term of protection for copyright protected works, ensuring that Peru's government will use only legitimate computer software, and setting out legal obligations to prevent piracy of satellite signals.

Enforcement

Peru has amended its laws and regulations to provide procedures and remedies for improved enforcement of IPR. As part of this effort, Peru reorganized the Intellectual Property Office of Peru (INDECOPI) to help expedite the hearing and granting of

precautionary measures (injunctive relief), revised its customs law and regulations to strengthen the procedures for suspending IPR infringing goods and ensuring that those infringing goods are seized and destroyed absent the allowable exceptions, and put in place deterrent-level penalties for copyright and trademark infringement both in civil and criminal violations.

17. (U) SERVICES BARRIERS

Under the PTPA, Peru assumed commitments to provide nondiscriminatory treatment and market access in a substantial number of services sectors. These commitments significantly improved upon Peru's WTO commitments in terms of sectors covered and elimination of restrictions in sectors such as advertising, construction and engineering, energy, information, express delivery, and entertainment, including audiovisual services and broadcasting. Peru also committed to increased regulatory transparency and to free transfers associated with the supply of a service.

Financial Services

The PTPA provides for market opening and nondiscriminatory treatment across most financial services sectors, including banking, insurance, and securities. Under the PTPA, U.S. companies have increased ability to provide portfolio advice and certain kinds of insurance on a cross-border basis.

Telecommunications

In recent years, U.S. companies have complained that Peru's telecommunications regulator (OSIPTEL) has not done enough to lower the average mobile termination rates in the country, which has resulted in significant barriers to competition in the wireless sector. The current maximum rate scale, which U.S. companies claim to be well above cost, is scheduled to expire at the end of 2009. OSIPTEL recently began the process through which it will establish new rates, and it is expected that a public comment proceeding on this matter will be conducted later in 2009 that will culminate in the establishment of new mobile termination rates for the coming years. Continued oversight and review of these rates by OSIPTEL

will be important to achieving progress in addressing concerns raised by suppliers.

18. (U) INVESTMENT BARRIERS

Under the PTPA, Peru assumed obligations relating to national treatment and most favored nation treatment, ensured the right of U.S. investors to make financial transfers freely and without delay, applied international legal standards for expropriation and compensation, and provided access to binding international arbitration.

Peruvian law restricts majority ownership of broadcast media to Peruvian citizens. Foreigners are also restricted from owning land or investing in natural resources within 50 kilometers of a border, but they may operate within those areas with special authorization.

Under current law, foreign employees may not comprise more than 20 percent of the total number of employees of a local company (whether owned by foreign or Peruvian persons) or more than 30 percent of the total company payroll. Under the PTPA, Peru agreed not to apply most of its nationality-based hiring requirements to U.S. professionals and specialty personnel.

U.S. firms remain concerned that executive branch ministries, regulatory agencies, the tax agency, and the judiciary often lack the resources, expertise, or impartiality necessary to carry out their respective mandates. U.S. investors have also complained about the reinterpretation of rules and the imposition of disproportionate fines by the tax agency.

The Peruvian government has tried to address institutional weaknesses in the executive branch and has also offered plans for judicial reform. In July 2005, the Supreme Court issued an edict stating that final binding arbitration awards cannot be disputed in the domestic judicial system. The U.S. Government has worked with the government of Peru both before, and in parallel with, the PTPA negotiations to ensure the fair resolution of U.S. investor disputes, consistent with Peruvian law.

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